

HEARING
OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Franchise /

Business Tax Appeals Hearing of:

MYUN SIK CHANG AND JAE WON CHANG, OTA Case No. 18011865

Appellants.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, SEPTEMBER 25, 2019

10:00 A.M.

OFFICE OF TAX APPEALS
1400 R STREET
SACRAMENTO, CALIFORNIA

Reported by: Gigi Lastra

APPEARANCES

Panel Lead:

JEFF ANGEJA, ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
1400 R STREET
SACRAMENTO, CALIFORNIA

Panel Members:

MICHAEL GEARY, ADMINISTRATIVE LAW JUDGE

SARA HOSEY, ADMINISTRATIVE LAW JUDGE

For Appellant:

FRANTA SAECHAO, ESQ.

For Franchise Tax Board:

SCOTT LAMBERT, ESQ., TAX COUNSEL
KEVIN BANKS, ESQ.
CHRIS BROOKS, ESQ.

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1 WEDNESDAY, SEPTEMBER 25, 2019 - 10:00 A.M.

2 ALJ ANGEJA: Let's go on the record.

3 The Office of Tax Appeals formal hearing for the
4 appeal of -- pardon me if I get it wrong -- Myun Sik Chang
5 and Jae Won Chang. And the Appeal Number is 18011865.

6 And before we proceed, we have an interpreter that is
7 here. I need to qualify and swear the interpreter.

8 Sir, would you please state your name for the record
9 and briefly go over your qualifications as a Korean
10 translator.

11 MR. KIM: Yes. Is this on?

12 ALJ ANGEJA: It should be.

13 MR. KIM: All right. Korean interpreter's name is
14 Ted Kim, T-E-D, K-I-M. State of California certified Korean
15 interpreter. Certification Number 3800380.

16 ALJ ANGEJA: Okay. That'll do. Please raise your
17 right hand.

18 Do you solemnly swear or affirm that you will
19 accurately translate from English into Korean and from Korean
20 into English to the best of your ability?

21 MR. KIM: I do.

22 ALJ ANGEJA: Okay. Thank you.

23 This will be a full translation. We're going to try
24 to work it consecutive. So I'd ask the parties to please --
25 we're actually doing it consecutive right now if you're okay

1 with that. Try not to talk over each other and speak clearly
2 (indiscernible).

3 So now we'll proceed. It is 10:00. We're in
4 Sacramento, California. And this is Wednesday,
5 September 25th, 2019.

6 My name is Jeff Angeja, and I'll be the
7 Administrative Law Judge for this hearing.

8 My fellow copanelists today are Sara Hosey and Mike
9 Geary.

10 ALJ HOSEY: Good morning.

11 ALJ GEARY: Good morning.

12 ALJ ANGEJA: Appellant, could you please identify
13 yourselves for the record?

14 MS. SAECHAO: Good morning, Franta Saechao for the
15 Appellants Myun Sik Chang and Jae Won Chang.

16 ALJ ANGEJA: Okay. Thank you.

17 And for CDTFA.

18 MR. LAMBERT: My name is Scott Lambert and to my left
19 is Kevin Hanks. And to Mr. Hanks' left is Chris Brooks.

20 ALJ ANGEJA: Thank you. This appeal involves one
21 issue which is whether reductions are warranted to the
22 measure of underreported tax of sales.

23 During the prehearing conferences, Department agreed
24 to admission into evidence Appellants' Exhibits 1 to 4 and
25 CDTFA's Exhibits A through K, neither party having objections

1 to the admission of those exhibits at that time. Is that
2 still correct?

3 MR. LAMBERT: That's correct.

4 ALJ ANGEJA: And then after the prehearing
5 conferences, Appellant had five additional exhibits which we
6 marked and copied (indiscernible) 5 to 11. We distributed
7 those to the parties.

8 Does CTFA have any objections to the admission of
9 those documents?

10 MR. LAMBERT: No objection.

11 ALJ ANGEJA: Okay. I hereby admit Appellants'
12 Exhibits 1 through 11 and CTFA's Exhibits A through K.

13 [EXHIBITS ADMITTED]

14 ALJ ANGEJA: And based on our prehearing conference,
15 it's my understanding that both Appellants will testify?

16 MS. SAECHAO: Actually, Mr. Chang will be the only
17 witness.

18 ALJ ANGEJA: Okay. And then as we agreed to in the
19 prehearing conference we will begin with Appellants'
20 testimony and argument. By the translation, we've allotted
21 60 minutes for that. CDFTA will then be allowed to ask
22 questions if so wish. And then CDFTA will make its
23 presentation not to exceed 30 minutes, I think that accurate
24 translation. And copanelists can ask questions if they wish.
25 And then Appellant will have approximately five minutes to

1 respond to CDTFA's arguments. All of that is an estimate
2 based on translation.

3 So with that, I will swear you in, Mr. Chang.

4 Please stand and raise your right hand.

5 Do you solemnly swear or affirm to tell the truth,
6 the whole truth, and nothing but the truth?

7 APPELLANT CHANG (VIA INTERPRETER): Yes.

8 ALJ ANGEJA: Okay. Thank you.

9 And Ms. Saechao, would you like to begin? Go ahead.

10 MS. SAECHAO: Thank you. Good morning. We are here
11 today because Mr. and Mrs. Chang are entitled to additional
12 reductions to the audited sales determined by the Department.
13 The dispute -- or the disagree --

14 ALJ ANGEJA: Let me -- if I can stop you. Maybe if
15 we move that microphone, if we're going to do this
16 simultaneous, slide it out of the way because we're hearing
17 both of you at once.

18 MR. KIM: Sure.

19 MS. SAECHAO: Thank you.

20 ALJ ANGEJA: Thank you.

21 MS. SAECHAO: The disagreements can be broken up into
22 three different areas. One, the average sales rates apply to
23 what we call the break periods. Two, the number of days the
24 Department has determined to be regular business days. And
25 three, the hours of operation of the restaurant.

1 In this case, the total of Department's adjustments
2 are broken in to the three separate adjustments that I just
3 mentioned. The Department looked at three different sets of
4 data to determine the audited sales figures. One in which I
5 call the break period. The second sales period what I call
6 the regular period. And three, sales in what I will call the
7 additional two-hour period.

8 Mr. and Mrs. Chang operated a café called Peanuts.
9 This café was located very closely to San Jose State
10 University. And their hours of operation closely followed
11 the school's hours of -- I guess the academic calendar.

12 When I use the term break period, I'm referring to
13 the entire time between winter and spring school semesters
14 and the summer break. This is in contrast to the regular
15 period which is the start of instruction through the end of
16 instruction. The Department's break days consist of
17 holidays, Fridays, Saturdays, Sunday, and the months of
18 October, November, and December.

19 It's important to distinguish between the break days
20 and regular days because the hours of business were different
21 and the sales differed significantly. While we -- while the
22 parties agree as to the number of business days, we disagree
23 as to the number of break days versus regular days. The
24 improper average sales rate was applied to a larger number of
25 regular days than there actually were and Appellants are

1 entitled to reduction for this error.

2 Appellants have provided a summary of Peanuts' hours
3 which is located on Exhibit 4, and an analysis of the number
4 of break days versus the regular days. These are Exhibits 5
5 through 7. Mr. Chang will testify about Peanuts' business
6 days, break days, and regular periods.

7 Appellants have also provide analysis of proposed
8 audited sales based on the actual business schedule which is
9 contained in Exhibit 8. The analysis shows that Appellants
10 are entitled to deductions of approximately \$146,000.

11 Appellants also dispute the average daily sales rate
12 determined for the break period. The Department came out for
13 a site test one day during one of the weeks the Department
14 claims to be a break period which happened to be the week
15 right before the start of the spring semester on January 17th,
16 2013. The average sales for this week was determined to be
17 \$1,230.95 per day. Mr. and Mrs. Chang's record of sales
18 during true break periods show the average sales string of
19 summer to be approximately 27 percent less, about \$899 on
20 average, and 48 percent less during the winter break which
21 amounted to about \$645 per day. This is contained in
22 Exhibit 9.

23 Mr. Chang will testify that the week before the
24 regular period starts and it's not truly a break period and
25 therefore the sales are unrepresented of true break periods.

1 The Appellants's analysis shows that if the Department used
2 the sales data for true break periods, Appellants are
3 entitled to a reduction in audit sales of approximately
4 \$198,000 for the break periods alone.

5 Additionally, Mr. and Mrs. Chang challenge the
6 average daily sales rate determined by the Department for
7 these break periods. On January 17th, 2013, there was a large
8 number of students from a fraternity and their friends who
9 came up to make up approximately 40 transactions which is
10 very unusual for a day during a break period.

11 The Department made an adjustment for 30 of these
12 transactions which did not sufficiently account for the
13 unusual amount of sales on this date which skews the data.

14 Lastly, Mr. and Mrs. Chang dispute adjustments the
15 Department made for additional two hours of sales each day
16 beyond their posted hours. During the regular schedule,
17 Peanuts was open until 7 p.m. on Mondays through Thursdays.
18 The Department -- the Department alleges they were open until
19 7:30, so the difference is only 30 minutes. However, the
20 Department applied two hours of sales calculated at 20
21 customers during the two-hour period for the entire audit
22 period.

23 Mr. Chang will testify that during the break periods
24 and in the summer, Peanuts regularly closed early and did not
25 stay open beyond 5 p.m. Appellants have conducted analysis

1 of sales during the regular schedule. The analysis shows
2 that the Appellants are entitled to deductions of anywhere
3 between 20,000 and 29,000.

4 Mr. Chang has prepared a testimony. His testimony be
5 a statement he would now like to read.

6 APPELLANT CHANG (VIA INTERPRETER): Want to thank you
7 for the judges who handle this case.

8 ALJ ANGEJA: Talk into the microphone. Thank you.

9 APPELLANT CHANG (VIA INTERPRETER): First of all, so
10 it was on January 17th 2013 which is the audit day when we had
11 school business so we had -- there are lots of fraternity
12 members who showed up on that day who are customers of ours.

13 ALJ ANGEJA: Since there's a slight break, can I --
14 can I ask a quick question. He's got a prepared statement?

15 MS. SAECHAO: That's correct.

16 ALJ ANGEJA: Would it be okay with you if the
17 interpreter read from that statement? They're both sworn and
18 we would be able to ask questions. It might make it easier.

19 MS. SAECHAO: Well, could we take a break so I could
20 review the statement?

21 ALJ ANGEJA: Or we could continue as we're going,
22 whichever. I just offered it as an idea.

23 MS. SAECHAO: I think we'd like to consider it, but
24 we'd like some time to confer.

25 ALJ ANGEJA: Two minutes?

1 MS. SAECHAO: Two minutes is fine.

2 ALJ ANGEJA: Okay. Sure.

3 MS. SAECHAO: Thank you.

4 [Off the record at 10:12 a.m.]

5 [On the record at 10:18 a.m.]

6 ALJ ANGEJA: So now we're officially back on the
7 record.

8 Could you please talk into that microphone directly.

9 MR. KIM: Yes.

10 ALJ ANGEJA: Thank you.

11 APPELLANT CHANG (VIA INTERPRETER): So January 17th,
12 2013 was -- that was the first audit day. So this was during
13 vacation time, but the audit occurred. So there were a bunch
14 of group members who were not expected came in that day. So
15 and a lot of those people came in. This woman who was the
16 woman auditor, she said that that day was a special day. She
17 told me that those customers will be exempt. I did count up
18 the number of those members. The reason I was able to count
19 the numbers were that they were all dressed in a particular
20 fashion. So this was some commemorative occasion so not only
21 were those members there but their girlfriends and
22 acquaintances as well. So it was ATO some commemorative day.
23 So we counted about 40 people.

24 After the audit was over, that person pulled out a Z
25 tape, and we picked that up a few days later at the San Jose

1 Board of Equalization Office. When we looked at the roll,
2 some portion was highlighted which was not highlighted by us.
3 So I was wondering whether the auditors were trying to exempt
4 that portion or not.

5 And also I'd like to talk about the vacation time.
6 Our business is tied to school activities and it's a seasonal
7 business. So you could look at eight month of -- as the
8 regular business period and four month as the vacation
9 period. So which would be inclusive of spring break and
10 during Thanksgiving period, almost a whole week goes by
11 without any business.

12 Normally one semester is four month, starts from --
13 starting from, the spring semester starting from end of
14 January -- the end of January and ends in second week of May
15 up until the finals. Summer vacation starts from end of May
16 to the end of August. And fall semester starts the end of
17 August till second week of December.

18 So audit day being January 17th, I would think, and
19 the school was to start on January 23rd. And things start to
20 pick up a week before the school starts and also one week
21 after the school ends. So some students need to look for
22 housing, they have to buy books and supplies. So things tend
23 to get busier somewhat. But in the middle of the vacation
24 time, it's almost like a ghost town.

25 If I were to talk about the hours that we are open.

1 So on the date of the audit, January 17th, I think it was
2 January 16th that the auditor called me, I was asked what time
3 we close. And we close up earlier during winter vacation
4 time, so we closed 5:00. That's what I told her. But she
5 added two hours through the vacation time as well. But
6 during summer period, once the lunch hours are over, it gets
7 really quiet. So by 3:00, 3:30, we start to get ready to
8 close up by cleaning the store, the café.

9 So what I'm saying is that there's no reason to stay
10 open when there are not any customers. I can show you the
11 receipt which show the hours for June, June and July during
12 vacation time. I can show you that.

13 So during the regular hours periods, we start to get
14 ready to close up by 6:30. We clean up. Evening class start
15 at 7 so sometimes they order and hurry up to eat and then
16 leave. So what I'm saying is we start to close up on one
17 side of the place and then instead of staying open.

18 At that time, average price of an item on the menu
19 was like five bucks. For example, hamburger with French
20 fries was \$3.95. Breakfast, two eggs and hashbrown and toast
21 was \$2.69. Lunch special with fries was \$3.49. So what the
22 other side is alleging that we had underreported was
23 \$448,917, almost half a million dollars. So what I'm saying
24 is with the prices we were charging, such low prices, it'll
25 be very difficult to be underreporting that amount.

1 The reason I've been able to run this type of
2 business for 35 years was being able to maintain very low
3 cheap price. That's it.

4 ALJ ANGEJA: Okay. Thank you.

5 Do you have more or does that conclude your
6 presentation?

7 MS. SAECHAO: That concludes the testimony for
8 Mr. Chang.

9 ALJ ANGEJA: Do you have anything else to add for
10 your presentation-in-chief?

11 MS. SAECHAO: No. Happy to answer any questions,
12 though.

13 ALJ GEARY: I do have a question probably for
14 Mr. Chang or perhaps for counsel.

15 I think he indicated in his testimony that during
16 break time, they closed at 5; is that right?

17 APPELLANT CHANG (VIA INTERPRETER): Yes. But
18 sometimes we would close up sooner than that if there were no
19 customers.

20 ALJ GEARY: And Ms. Franta, for you, the Exhibit 4
21 indicates that 4:00 close time during vacation and break
22 hour.

23 MS. SAECHAO: That's correct. My understanding is
24 that they're posted hours, so they would close at 4:00 during
25 the break periods.

1 ALJ GEARY: So Mr. Chang testified 5. Since the
2 hours of operation is at issue (indiscernible).

3 MS. SAECHAO: Well, I think what he was saying and he
4 can clarify was that they wouldn't be open beyond 5:00.

5 ALJ GEARY: Mr. Chang, would you sometimes close
6 before 5?

7 APPELLANT CHANG (VIA INTERPRETER): Lots of times.
8 So many occasions during June, July, up until middle of
9 August that we would close up earlier like that.

10 ALJ GEARY: Would you during the break time sometimes
11 close before 4?

12 APPELLANT CHANG (VIA INTERPRETER): There are lots of
13 times we close up like that either during the spring break,
14 June, July, or August.

15 ALJ GEARY: Thank you.

16 ALJ ANGEJA: Okay. The panel doesn't have any
17 additional questions.

18 CDTFA, do you have questions of the witness?

19 MR. LAMBERT: We do not.

20 ALJ ANGEJA: All right. Then I think that concludes
21 the opening statements (indiscernible).

22 MS. SAECHAO: I just had some closing remarks, then,
23 if you -- if I may.

24 ALJ ANGEJA: Do you want that for your rebuttal or do
25 you want that now as well?

1 MS. SAECHAO: I guess I'll save it for the rebuttal.

2 ALJ ANGEJA: Okay. So CDTFA go ahead.

3 ALJ GEARY: May I? Before you start, Mr. Lambert,
4 perhaps we should pull the microphone away from -- thank you.

5 MR. LAMBERT: Thank you. On this particular case,
6 the taxpayer operates a restaurant across the street from San
7 Jose University. Upon audit, the taxpayer presented their
8 records. The records were just a summary records, the detail
9 records were not available such as the cash register tapes or
10 the guest checks. Therefore, it was found that that was an
11 issue, that we didn't have the detailed records. And also we
12 took a look at the markup of record on the income tax returns
13 for 2010 and 2011.

14 The 2010 markup was 185 percent. The markup on 2011
15 was 161 percent. For a restaurant that also sales alcohol,
16 we consider that to be low for that type of business. In
17 addition the taxpayer was a cash only business, therefore,
18 that in and of itself leads to audit issues. It was found
19 that not all cash was deposited into the bank account.

20 So based on this information, the Department decided
21 to use an alternative method. The alternative method in this
22 case were observation tests. First observation test was
23 conducted and the summary of that is on Exhibit B, page 24.
24 And what I would point out from this particular test -- or
25 these particular figures, there's four days, is that we were

1 only observing one of the days which was January 17th. So we
2 accepted the figures on the -- on the Z tapes for the prior
3 three days, January 14th, January 15th, and January 16th.

4 Now during that particular test, two groups were
5 identified that frequented the restaurant that day. There
6 was a fraternity and also a small group of special needs
7 individuals and their assistants. The auditor allowed an
8 adjustment for those groups based on 30 individuals at a rate
9 of \$6.75 an individual. The -- it was -- it was difficult
10 for the auditor to determine all people associated with those
11 groups. And if -- there's a comment on Exhibit D, page 1,
12 and I'll read that. It's made at January 17th, 2013. It
13 says, "According to the second shift auditor, there are some
14 students from ATO initiation but not in a large group.
15 Usually two or three together, and they are less than 15."

16 So we did make an adjustment for that and I guess it
17 could be argued that that wasn't unusual and there should not
18 be an adjustment for that. If you basically take out the
19 sales to both groups, what you're essentially saying is is
20 that there were never sales to large groups during the audit
21 period.

22 So therefore, even if you accept the Appellant's
23 argument, we believe -- first of all, we don't accept that
24 was over that amount, but if you do believe that, we believe
25 that a certain amount of those sales should remain in the

1 test in any case.

2 The calculation of the underreported taxable sales is
3 on Exhibit E, page 5 and 6.

4 ALJ GEARY: What's the Bate's stamp for that?

5 MR. LAMBERT: The Bate's stamp. Okay. Yeah, it's
6 fifty -- I believe 55 and 56.

7 ALJ GEARY: Exhibit E?

8 MR. LAMBERT: It's Exhibit E, page 5 and page 6.

9 So this is essentially how the liability was
10 calculated. And this was done after the appeals conference.
11 So I believe the reference to \$448,000 in underreported
12 sales, that figure is from the initial audit. If you look at
13 one page earlier which is Exhibit E, page 4, Column D, it'll
14 show you what the current amount is which is \$391,420.

15 So if you do notice Column B.1, there was an
16 adjustment made for hours to basically accommodate what we
17 believe the hours are currently. There were different hours
18 used in the initial audit. And so this adjustment here is to
19 adjust for some of the errors at the appeals conference
20 holder found in the numbers that we -- in the hours that we
21 used.

22 So the hours that were used in the reaudit are Monday
23 through Thursday, 6:30 a.m. to 7:30 p.m. Friday, 6:30 a.m.
24 to 6:30 p.m. Saturday, 7:30 a.m. to 4:00 p.m. And always
25 closed on Sunday.

1 So that's how the figures were -- how this audit
2 calculated figures. Now the Appellant has provided some
3 proposed schedules and their hours of operations appear to be
4 different. Their argument is that the hours are different
5 than what we've used in our audit. So if you look at
6 Exhibit G, page 6, which I believe is the back of a menu, it
7 shows the same hours that we used.

8 Exhibit G, page 12, is the hours that are on Google,
9 which are the same hours that we used. The hours on
10 Exhibit G, page 14 from Yelp are the same hours that we used.
11 The hours, Exhibit G, page 25, which is online menus is the
12 same hours that we used.

13 I will also point to the observation test that was
14 conducted on January 17th, 2013. That test went until 5:30 at
15 night which is different between the varying hours that have
16 been argued throughout this audit, anywhere from 4 p.m. being
17 closed to 5:30 p.m. being closed. And so initially we were
18 told they closed at 5:30. When one of the auditors went by
19 the business, they noticed they were operating later than
20 that. And that's when this issue came to light.

21 Regarding the number of break days, if you look at
22 Exhibit 5, page 9, and look at May 25th of 2010. It showed
23 the taxpayer is recording that as a break day. If you look
24 at our Exhibit B, page 12 and go to May 25th at 10, what
25 you'll show is sales of \$1474. It does not appear that that

1 is a break day. We've not recorded it as a break day. So
2 this is considered one of our spring semester days and we
3 recorded it as such.

4 If you look at Exhibit 6, page 9, and refer to
5 May 24th of 2011, it also shows a break day. If you reference
6 our schedule, Exhibit B, page 13, the sales -- taxable sales
7 for May 24th, 2011 are \$1433. Again, this doesn't appear to
8 be a break day.

9 You refer to Petitioner's Exhibit 7, page 9, there's
10 two days, May 15th of 2012 and May 23rd of 2012. Both of these
11 are recorded as break days in the taxpayer's schedules. If
12 you look at the Department's Exhibit B, page 14, it shows
13 May 15th as \$1315 taxable sales and May 22nd, 2012 as \$1459.

14 ALJ GEARY: Mr. Lambert, did you say May 23rd, first
15 was striking a --

16 MR. LAMBERT: You know what I did -- I may have. I
17 should have referred to May 22nd of 2012.

18 ALJ GEARY: All right. So you --

19 MR. LAMBERT: On Exhibit 7, page 9.

20 ALJ GEARY: Okay.

21 MR. LAMBERT: If I did, that was my -- my error.

22 ALJ ANGEJA: So we cut you off. The sales for --

23 MR. LAMBERT: So the sales for May 22nd of 2012 were
24 \$1459 which does not appear to be a break day.

25 So I believe the Appellant has argued that they

1 believe the day before the -- the day before the semester
2 starts, they consider that not to be a break day. Their
3 schedules are inconsistent with that statement. Their
4 schedule show that the sales before school starts are all
5 break days in all three years.

6 So unfortunately, we only have their records for a
7 short period of time. In other words, on each one of those
8 schedules that I refer to at the Department, it only has one
9 day of the week for about four months or so during the spring
10 semester. So we do not have a full record to address each
11 one of what they consider to be break days and what we
12 consider to be break days. The bottom line, we believe that
13 the taxpayers' schedules don't appear to be consistent with
14 what their actual records are and what probably took place
15 which is what the Department has -- shows in their records.

16 In -- in regards to the large groups, the Appellants'
17 Exhibit 3 has a listing of all the sales that were made to
18 the fraternity. And if you add up all of these, I believe
19 the -- the argument's been made that there's 48 transactions
20 and I will say there are -- there are 48 transactions on the
21 Appellants' Exhibit 3.

22 What I would point out is that some of the sales
23 appear to be maybe multiple customers and we don't have --
24 I'm unable to read the cash register tapes so it's difficult
25 to say. But if you look at Customer Number 145, \$15; 146 is

1 \$32; 152 is \$13; Customer 157, \$20; 170 is \$16; Customer 181
2 is \$18; and Customer 185 is \$41.

3 What I'm pointing out here is that if you take the 48
4 customers -- I shouldn't say that. I should if you take the
5 48 transactions and you figure out actually how many
6 customers are on here, you're probably getting closer to 60
7 than even what was alleged of the 40. So this schedule
8 appears to have more sales on here than -- or more fraternity
9 members than has even been argued.

10 As far as the mark on the cash register tape, I've
11 spoken to the auditor and she denies that there were -- that
12 she placed the mark on the register tapes of the yellow
13 highlight. And she believes the Appellant is the one that
14 put that on the cash register tapes.

15 The letter from the fraternity stated there was
16 approximately 40 fraternity members. I'll point out that
17 that letter was dated four days after the test but it was not
18 presented until the appeals conference which calls into some
19 question in regards to that -- the timing of that letter.
20 Also on that cash register tape, that was not brought up
21 until after the appeals conference.

22 So if -- and this is the -- my last issue. If you
23 take a look at Exhibit G, page 5, and this is, I think, this
24 goes to the reasonableness of the Department's audit. You
25 talk -- if you take a look at Column C, it's the taxable

1 sales that have been reported by this taxpayer. And
2 there's -- you see there's a line after third quarter of
3 2012, that was at the point that the taxpayer was notified of
4 an audit. As you can see, those amounts are substantially
5 less than the amounts after that quarter. The sales increase
6 substantially after the taxpayer was notified of audit.

7 And, the amounts that are being reported after the
8 third quarter of 2012 are consistent with the audited amounts
9 found in Column E. What I would point out, this schedule was
10 prepared before the appeals -- or it was prepared before the
11 reaudited adjustment were made so the amounts in Column E are
12 slightly higher -- well, basically combined a little over
13 \$60,000 higher than what they ended up being. So even with
14 that, it makes it where the taxpayer's reporting more than
15 what the audit came up with after they were notified of
16 audit.

17 So accordingly, the Department rests their position.

18 ALJ ANGEJA: Okay. Questions from the panelists?

19 ALJ GEARY: I have one, Mr. Lambert. You said an
20 auditor went by the facility and noticed it was opened later.
21 Is that reflected in the audit papers that observation and
22 notation with what year she saw?

23 MR. LAMBERT: It is.

24 ALJ GEARY: You don't need to find it for me.

25 MR. LAMBERT: It is -- it is in the -- it's in the

1 audit history, assignment audit history which is called the
2 414Z. Unfortunately, my recall doesn't tell me what exactly
3 date, but it -- and there is a number of entries in there but
4 it is included in there.

5 ALJ GEARY: Thank you. That's all I have.

6 ALJ ANGEJA: Questions?

7 ALJ HOSEY: No questions. Thank you.

8 ALJ ANGEJA: And I have none. You wanted to have
9 rebuttal so we'll allow for that now.

10 MS. SAECHAO: Thank you.

11 With respect to the January 17th site test date, the
12 argument is not that it's unusual to have large groups visit
13 the restaurant at once, the argument is that it's unusual for
14 such a large group to visit the restaurant during a break
15 period.

16 So the break periods again are the periods between
17 the end of one semester and the beginning of the other
18 semester. The week in which this observation test occurred
19 was right before the spring semester. As Mr. Chang has
20 testified, students are coming in to get situated with their
21 housing, buy their books, socialize, fraternize, and so
22 there's social events that week.

23 There is a big difference between the week before
24 school starts and let's say the two weeks for the Christmas
25 break, the holiday break, or any month in the middle of

1 summer. The Department used this week's sales to determine
2 the audited sales for all the break periods. That is
3 unrepresentative of actual sales during the dead of summer or
4 during the dead of winter.

5 The hours of operation are important and we're not
6 arguing that there's a, you know, differing -- that the
7 Appellants have had differing hours and they close at times
8 when business is slow or they may stay later at times than
9 the posted hours. It's important because they rarely stay
10 open during -- for an extra two hours beyond the posted hours
11 for the summer months or for the two-week holiday months.
12 And it's unfair that the Department has adjusted two
13 additional hours of sales for the dead -- for the entire
14 summer break period when sales were really slow.

15 Mr. Lambert has commented that after notification of
16 the audit, the Appellants began reporting sales that were
17 more in line with what the reports suggest. The Appellants
18 have provided information regarding the sales for the summer
19 of 2013 which is after the audit period and for the December
20 month of 2013 which is after the audit period. The data from
21 those periods show that they were actually closed on average
22 by 4:30 during those periods.

23 The Department only -- or the Department did not
24 include the two-hour sales period for Fridays, Saturdays,
25 Sundays, and the months of October, November, and December

1 which is just not how the restaurant operated. They would
2 stay open during the regular school semester as they had to
3 because there were more students. When there were less
4 students, they didn't stay open that late.

5 I think that's all I have. I would point that the
6 Appellants have summarized their proposed adjustments on
7 Exhibit 11. The individual Exhibits 4, 8, 9 provide
8 information about how the Appellants determined their
9 proposed adjustments. We're not suggesting that the
10 Appellants were perfect in their bookkeeping records, in
11 their accounting records for the audit period, but we are
12 asking the panel to consider the real circumstances of a
13 small restaurant operating across the street from a
14 university which is the primary customer base. The
15 information and the proposals that are presented by the
16 Appellants reflect the actual fluctuation of the business
17 because of the academic calendar.

18 And I think that's all we have.

19 ALJ ANGEJA: Okay. Any questions?

20 ALJ HOSEY: No.

21 ALJ ANGEJA: All right. I think that will close the
22 record and we will conclude the hearing. I want to thank
23 each party for everything today.

24 Following this hearing, the panelists and I will
25 discuss the case, evidence, and arguments, and we will issue

1 a written opinion in a few days.

2 So with that, this hearing is now closed. Thank you.

3 MS. SAECHAO: Thank you.

4 MR. LAMBERT: Thank you.

5 (Whereupon the proceedings were

6 adjourned at 11:04 a.m.)

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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 2019.



Eduwiges Lastra
CER-915

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 2019.



Jill Jacoby
Certified Transcriber
AAERT No. CERT**D-633